

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KARLA CHRISTINE FLORES
Plaintiff,

V.

ALLEN HENDERSCHIEDT
TRUCKING, INC. and KEVIN
WARNER
Defendants.

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CIVIL ACTION NO. 4:22-cv-00778

ANDREW M EDISON
Magistrate Judge

Courtroom Clerk

Court Reporter

Proceeding

JURY CHARGE

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
11. The answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

INSTRUCTIONS AND DEFINITIONS

As to *Kevin Warner*, “Negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which person of ordinary prudence would not have done under the same or similar circumstances.

As to *Allen Henderschiedt Trucking, Inc.*, “negligence” and “negligent entrustment” means entrusting a vehicle to a reckless driver if the entrustor knew or should have known that the driver was reckless. Such negligence is a proximate cause of a collision if the negligence of the driver to whom the vehicle was entrusted is a proximate cause of the collision.

“Ordinary care” means the degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Proximate cause” means that cause which, in a natural and continuous sequence, unbroken by any new and independent cause, produces an event, and without which cause of such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using *ordinary care* would have foreseen that the event, or some similar event, might reasonably result therefrom.

A fact may be established by direct evidence or by circumstantial evidence or by both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from the other acts proved.

QUESTION NO. 1

- a. Did the negligence, if any of the named below proximately cause the collision in question?

Answer "Yes" or "No" for each of the following:

1. Kevin Warner _____
2. Karla Christine Flores _____

PJC 4.1

APPROVED: _____
DENIED: _____
MODIFIED: _____

JUDGE PRESIDING

QUESTION NO. 2

An employee is acting in the scope of his employment if he is acting in the furtherance of the business of his employer.

On the occasion in question, was Kevin Warner acting in the scope of his employment with Allen Henderschiedt Trucking Inc.?

Answer: "Yes" or "No."

Answer: _____

PJC 10.6

APPROVED:_____

DENIED:_____

MODIFIED:_____

JUDGE PRESIDING

Answer the following question regarding Kevin Warner only if you unanimously answered “Yes” to Question No. 1 regarding Kevin Warner. Otherwise, do not answer the following question regarding Kevin Warner.

To answer “Yes” to the following question, your answer must be unanimous. You may answer “No” to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 3

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of truth of the allegations sought to be established.

“Gross negligence” means an act or omission by Kevin Warner which:

1. When viewed objectively from the standpoint of Kevin Warner at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. Kevin Warner has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Do you find by clear and convincing evidence that the harm to Karla Christine Flores resulted from gross negligence?

Answer “Yes” or “No.”

Answer: _____

PJC 4.2

If you answered "Yes" to question No. 1 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the collision. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentages of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one is answering another question.

QUESTION NO. 4

For each person you found caused or contributed to cause the collision, find the percentage of responsibility attributable to each:

1.	Kevin Warner	_____ %
2.	Karla Christine Flores	_____ %

Total: 100%

PJC 4.3

APPROVED: _____
DENIED: _____
MODIFIED: _____

JUDGE PRESIDING

QUESTION NO. 5

As to *Allen Henderschiedt Trucking, Inc.*, "negligence" means entrusting a vehicle to a reckless driver if the entrustor knew or should have known that the driver was *reckless*. Such negligence is a proximate cause of the occurrence if the negligence of the driver to whom the vehicle was entrusted is a proximate cause of the occurrence.

Did the negligence, if any, of the persons named below proximately cause the Occurrence in question?

Answer "Yes" or "No" for each of the following:

Answer the question as to *Allen Henderschiedt* only if you have answered "Yes" as to *Kevin Warner*.

1. *Allen Henderschiedt Trucking, Inc.* _____

2. *Kevin Warner* _____

PJC 10.12

APPROVED: _____
DENIED: _____
MODIFIED: _____

JUDGE PRESIDING

QUESTION NO. 6

What sum of money if paid now in cash, would fairly and reasonably compensate Karla Christine Flores for her injuries, if any, that resulted from the occurrence in question.

Consider the elements of damages listed below and none other. Consider each element separately. Do not include damages for one element in any other element. Do not include interest on any amount of damages you find.

- a. Physical pain in the past _____
- b. Physical pain in the future _____
- c. Mental anguish in the past _____
- d. Mental anguish in the future _____
- e. Physical impairment in the past _____
- f. Physical impairment in the future _____
- g. Medical care in the past _____
- h. Reasonable and necessary costs for Medical care in the future _____
- i. Disfigurement in the past _____
- j. Disfigurement in the future _____

APPROVED:_____

DENIED:_____

MODIFIED:_____

JUDGE PRESIDING

Answer the following question regarding Allen Henderschiedt Trucking, Inc. only if you unanimously answered “Yes” to Question No. 5 regarding Kevin Warner. Otherwise, do not answer the following question regarding Allen Henderschiedt Trucking, Inc.

QUESTION NO. 6

“Exemplary damages” means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages includes punitive damages.

Factors to consider in awarding exemplary damages, if any are—

1. The nature of the wrong;
2. The character of the conduct involved;
3. The degree of culpability of the wrongdoer;
4. The situation and sensibilities of the parties concerned;
5. The extent to which such conduct offends a public sense of justice and propriety; and
6. The net worth of Allen Henderschiedt Trucking, Inc.

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against Allen Henderschiedt Trucking, Inc. and awarded to Karla Christine Flores as exemplary damages for the conduct found in response to Question No. 3?

Answer in dollars, and cents, if any.

Answer: \$ _____

PJC 28.7

Certificate

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court our verdict.

(To be signed by the presiding juror if unanimous.)

PRESIDING JUROR

(To be signed by those rendering the verdict if not unanimous.)

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict.

If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

JUDGE PRESIDING